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LIMITATIONS ON THE "ACCEPTANCE ON MAILING" THEORY. — All jurisdictions, except possibly Massachusetts,¹ hold that a letter accepting an offer completes the contract when mailed.² Although it has been held that this doctrine depends on the irrevocable character of the act of mailing,³ the change in the United States postal regulations which allows letters to be reclaimed until delivered⁴ has made no difference in the decisions,⁵ and whether logical or not the general existence of the rule must be admitted. Its operation extends even to cases where the letter is never delivered.⁶ Yet, on examination, it would seem to have certain necessary restrictions.

In the first place the acceptance, in order to take effect when mailed, should be properly stamped and addressed. For, even if we adopt the theory that the post-office is the agent of the offerer⁷ — a theory which is hardly borne out by the facts — mailing a letter not adequately prepared for transmission can scarcely be considered such a delivery as would bind the principal. And the more satisfactory theory, which throws the uncer-

¹ McCulloch v. Eagle Ins. Co., 1 Pick. (Mass.) 278; but see Bishop v. Eaton, 161 Mass. 496.

² Tayloe v. Merchants Fire Ins. Co., 9 How. (U. S.) 390; Henthorn v. Fraser, [1892] 2 Ch. 27.

³ Ex parte Cote, L. R. 9 Ch. App. 27.

⁴ Postal Laws and Regulations, 1893, §§ 487, 488, 489.

⁵ McDonald v. Chemical Nat. Bk., 174 U. S. 610, 620; Hartford, etc., Ins. Co. v. Lasher Stocking Co., 66 Vt. 439; Bishop v. Eaton, *supra*.

⁶ Duncan v. Topham, 8 C. B. 225; Household, etc., Co. v. Grant, 4 Ex. D. 216; White v. Corlies, 46 N. Y. 467.

⁷ Household, etc., Co. v. Grant, *supra*; Hartford, etc., Ins. Co. v. Lasher Stocking Co., *supra*.

tainty on the offerer as the one who took the first step, and holds that when the acceptor has done all that he ought to do, he may consider the contract complete, certainly does not apply where the acceptor has been negligent. No man by his negligence should be allowed to throw a risk upon another without his consent. The test in such cases, therefore, would seem to be that if there is any risk of delay at the time the letter is mailed, caused by the negligence of the acceptor, the acceptance should not take effect until received.⁸ Very slight errors, as in penmanship or spelling, should not be fatal unless dangerous. The risk alone should be the test, and subsequent delay or prompt delivery should be important only as evidence of that. For if there is danger of delay on account of misdirection, and the acceptance will not complete the contract at the time it is mailed, it would hardly be logical to contend that a merely fortuitously prompt delivery would relate back, and change the original character of the act.⁹

There is a second way in which the acceptor might throw risk upon the offerer without authorization. Although his situation is not ordinarily changed by unusual delays in the transmission of the mails,¹⁰ yet, if, knowing beforehand of an existing danger of such delays, he nevertheless uses the mails, he cannot claim the protection of an authorization for such action implied when the mails were regular. Unless the offerer, by himself knowingly using the mail under these extraordinary conditions, has given implied permission to the acceptor to do the same, no such implied permission exists. Here, then, is another limitation to this doctrine, since it is always based upon some sort of authorization. During the Transvaal war, the holder of an option to buy certain land mailed three letters of acceptance before the expiration of that option. As, owing to the war, there was no regular postal communication, only one letter was delivered, and that after the option had expired. It was held that the acceptance did not take effect when mailed. *Bal v. van Staden*, 20 So. Afric. L. J. 407. The decision is doubtless sound. The acceptor ought not to be allowed knowingly to throw any risk upon the offerer which the latter has not, at least by implication, agreed to accept. The same principle applies as in the case of his negligence. Whenever at the time the acceptor mails the letter he knows that he is incurring an unauthorized risk, or whenever at that time his negligence has occasioned such a risk, the acceptance should not take effect until received.

LIABILITY OF MUNICIPAL CORPORATIONS FOR SERVICES PERFORMED UNDER VOID CONTRACTS.—By an action in quasi-contract one who does work under a contract supposedly valid, but actually invalid, can generally recover the value of the benefits conferred by his services.¹ Where, however, services are so rendered for a municipal corporation other considerations become important. Often there are statutes expressly prohibiting recovery. Where there are no such statutes the question has frequently arisen and the cases have been divided into two classes: first, where the services

⁸ *Blake v. Hamburg, etc., Ins. Co.*, 67 Tex. 160; *Potts v. Whitehead*, 20 N. J. Eq. 55. *Contra*, *Schultz v. Phenix Ins. Co.*, 77 Fed. Rep. 375.

⁹ But see *McCulloch v. Eagle Ins. Co.*, *supra*.

¹⁰ *Dunlop v. Higgins*, 1 H. L. Cas. 381.

¹ *Van Deusen v. Blum*, 18 Pick. (Mass.) 229.